

an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section may not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor may it be construed to restrict a railroad from prohibiting such presence under its own rules.

#### § 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

#### § 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

#### § 219.104 Responsive action.

(a) *Removal from covered service.* (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service and the procedures described in paragraphs (b) through (e) of this section apply.

(2) If an employee refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of this part, the railroad must immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section apply.

(3)(i) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (e.g., testing under a company medical policy, for-cause testing policy wholly independent of subpart D of this part, or testing under a labor agreement).

(ii) This section and the information requirements listed in § 219.23 do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating the misuse of alcohol or controlled substances.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement.